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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 IN RE: Bard IVC Filters Products Liability
10 Litigation,
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No. MDL 15-02641-PHX-DGC

CASE MANAGEMENT ORDER NO. 39
(Tinlin Bellwether Case)

15 In Case Management Order (“CMO”) No. 36, issued August 2, 2018, the Court set
16 a schedule for the parties to follow in preparing the Tinlin bellwether case for trial.
17 Doc. 12061. Certain of those deadlines were extended two months later. Doc. 12759.
18 In CMO No. 38, the Court set a schedule for the final two bellwether trials, Mulkey and
19 Tinlin, to be held in February and May 2019. Doc. 12853 at 2-6. The Court determined
20 that Mulkey should be tried in February unless the Court were to grant summary
21 judgment in the case or Ms. Mulkey’s health were to worsen. *Id.* at 1-2. The Court left
22 open the possibility that Tinlin could be tried in February instead of May. *Id.*

23 The parties have now filed a stipulation that Tinlin should be tried only in the May
24 bellwether slot given that the present schedule for completion of discovery in Tinlin is
25 not feasible. Docs. 12895, 12924. The parties propose an amended discovery schedule
26 for Tinlin. *Id.*

27 The Court will accept the parties’ stipulation that Tinlin should be tried in May
28 and approve the proposed changes to the discovery schedule. This order will control the

1 schedule for the Tinlin trial. The deadlines and dates for the February bellwether trial, as
2 set forth in CMO 38, will continue to apply to Mulkey. *See* Doc. 12538 at 2-4.

3 **I. Tinlin Discovery Schedule.**

4 The parties shall follow this amended schedule in preparing the Tinlin case for
5 trial in May 2019:

6 1. The parties shall obtain updated medical records by
7 **November 12, 2018.**

8 2. The parties shall complete the depositions of treating physicians and
9 fact witnesses by **December 10, 2018.**

10 3. Plaintiff's case-specific expert disclosures shall be completed by
11 **November 16, 2018**

12 4. Defendants' case-specific expert disclosures shall be completed by
13 **December 17, 2018.**

14 5. Case-specific experts shall be deposed by **January 18, 2019.**

15 **II. Tinlin Trial Schedule.**

16 **A. Jury Questionnaire and Jury Selection.**

17 1. By **March 1, 2019**, the parties shall provide the Court with proposed
18 changes to the questionnaire. The Court will consider these proposals in finalizing the
19 questionnaire.

20 2. The Clerk shall mail the questionnaire to 200 jurors no later than
21 **March 8, 2019.** The questionnaire will instruct the prospective jurors to return it to the
22 Court no later than **April 5, 2019.**

23 3. A thumb drive will be prepared for counsel (one for each side)
24 containing copies of the questionnaires and will be available for pickup at the jury office
25 on **April 12, 2019.** The thumb drive and any paper copies made by counsel must be
26 returned to the Court by counsel on the day of jury selection.

27 4. On **April 19, 2019**, the Court will provide the parties with a list of
28 prospective jurors the Court proposes to excuse for hardship on the basis of their

1 responses to the first question in the questionnaire.

2 5. The Court will hold a final pretrial conference on **April 30, 2019**
3 **at 10:00 a.m.** At the final pretrial conference, counsel will be permitted to challenge the
4 Court's excusal of any of the listed jurors for hardship. If counsel do not object to the
5 Court's proposed excusal of a particular juror for hardship, that juror will be excused
6 from further involvement in this case. After hearing counsel's objections to hardship
7 excusals, the Court will determine which of the challenged jurors should be excused for
8 hardship and which should appear for voir dire. In addition, counsel shall be prepared to
9 make challenges for cause to jurors on the basis of information contained in their
10 questionnaires. These challenges should be limited to jurors who clearly could not serve
11 as a fair juror on the basis of their questionnaire answers. The Court will rule on these
12 challenges at the final pretrial conference. All prospective jurors who returned
13 questionnaires and who have not been excused for hardship or successfully challenged
14 for cause will be candidates for voir dire.

15 6. On **May 13, 2019, at 9:00 a.m.**, 50 prospective jurors will be called
16 to Court to appear for voir dire. The Court will permit counsel to ask follow-up questions
17 of individual jurors based on information contained in the juror questionnaires. Counsel
18 should not venture into new subjects – they should limit their follow-up questions to the
19 items covered in the questionnaire. Following voir dire, the Court will hear and rule on
20 challenges for cause.

21 7. The Court will seat 9 jurors. Each side will have 3 pre-emptory
22 strikes.

23 8. The Court anticipates that opening statements and evidence will
24 begin on the afternoon of **May 13, 2019**.

25 **B. Dispositive and *Daubert* Motions.**

26 Dispositive and *Daubert* motions shall be filed by **February 1, 2019**, responses by
27 **March 1, 2019**, and replies by **March 15, 2019**.

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